

Congress of the United States
Washington, DC 20515

October 31, 2007

Dr. William Hogarth
Administrator
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Dr. Hogarth:

We are writing to emphasize several key points which are vital to address in the proposed regulations for implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). As you know, earlier this year, we submitted a lengthy comment letter (a copy of which is attached) offering our interpretations on a number of important aspects of the new law. Because the process of developing the proposed regulations has now reached a stage where decisions on some of these matters will likely be made in the near future, we thought it would be helpful to underline the most important issues. All of these points are discussed in greater detail in the earlier comment letter.

Role of Science in Fishery Management. The MSRA raises the profile of science in the management of our fisheries by, among other things, requiring the establishment of annual catch limits (ACL) and calling for accountability measures when ACLs are exceeded. With this greater reliance on science, which we support, comes a greater responsibility for high quality data and balanced analysis, and it is essential that the implementing regulations reflect this need. Specifically, it is vital that the Science and Statistical Committees (SSC) draw from the broadest possible range of scientific opinion and methodologies in calculating ACLs. In addition, the science that underlies the ACLs and the process by which the ACLs are developed should be peer reviewed and transparent. Finally, the MSRA makes it clear that economic and social considerations must be more fully integrated into fishery management decisions, and it is therefore crucial that these elements become ongoing components of the scientific work mandated by the new law.

Role of Regional Fishery Management Councils. While the SSCs will have a more prominent role in fishery management as a result of their responsibility for developing ACLs under the MSRA, it should be made clear in the implementing regulations that the Councils, subject to NMFS approval, retain the ultimate authority to determine how ACL targets will be met. There should be a sharp distinction between on the one hand the technical guidance that will be provided by the SSCs based on their assessment of the appropriate fishing levels for given stocks, and on the other hand the decisions of the Councils on how best to allocate the limited marine fishery resources within the overall ACL limits established by the SSCs. In other words, there will in most cases be a range of possible management measures which can be expected to keep a given fishery within the designated ACL targets, and the Councils should retain the key role in choosing the best option.

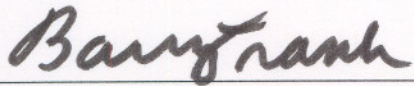
Accountability and Rebuilding Flexibility. The MSRA contemplates the possibility that accountability measures will be imposed when ACLs are exceeded, but the law does not require the deduction of “overages” in one year from a subsequent year’s fishing allocation, and the regulations should make that clear. The legislative history is unambiguous on this point – the initial Senate legislation included an overage provision, but it was dropped in the final version of the legislation. Thus, given the fact that accountability measures are not *required* under the law even when there are overages, the regulations should explicitly empower Councils to respond in a variety of ways to overages. These responses could include spreading out the necessary correction over several years or – in cases where rebuilding more than compensates for any overages – not imposing any accountability measures if rebuilding is projected to continue at a satisfactory rate. Finally, the regulations should also include clear authorization for extension of rebuilding periods for reasons other than the three explicitly provided for in Section 304(e)(4)(A)(ii) of the Magnuson Act, including, for example, when biomass targets are significantly increased during a rebuilding period. The MSRA’s Section 120 (which applies to summer flounder) states that nothing in the section should be construed to “limit or otherwise alter the authority of the Secretary...concerning other species.” Because the Secretary evidently possesses the authority to extend the rebuilding period by means of “re-starting the clock”, an action which was taken with regard to several New England groundfish stocks in 2003, the existing authority obviously includes the ability to do this, and the regulations should reflect that.

Limited Access Privilege Programs (LAPP). The LAPP provisions of the MSRA include language calling for criteria aimed at broadening the participation in the New England LAPP referendum process “in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.” This language should be interpreted in an expansive manner in the regulations, so as to permit a large percentage of affected crew members to vote in referenda. In addition, while the MSRA exempts sectors from the two-thirds referendum requirements, this exemption should not be used as a pretext to circumvent the referendum requirements. Rather, the regulations should prescribe narrow criteria for sector designation so that other participants in the same fishery are not forced to comply with – or compete with – an allocation system that is effectively a LAPP or Individual Fishing Quota (IFQ) system, notwithstanding the fact that the system has not been subject to the law’s two-thirds referendum requirements.

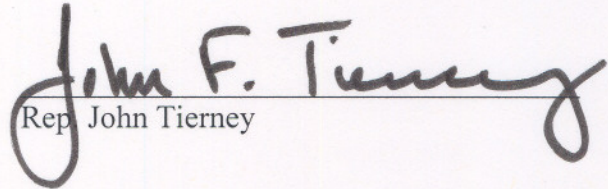
Safety. Section 104(a)(5) of the MSRA specifically requires safety to be taken into consideration as an integral part of fishery management measures. The purpose of this provision is to promote ongoing analysis of the safety implications of management proposals including such features as closed areas, days at sea, and trip limits, rather than addressing unintended safety implications of management regimes after the fact, when revisiting them may lead to harmful delays from both resource management and safety points of view. Fishing will remain a dangerous way to make a living regardless of any regulatory steps, but it is incumbent on the government, to the extent it can, to avoid increasing those dangers or putting in place management measures that could in any way compromise safety. The

regulations should require safety to be actively considered as each important fishery management decision is debated.

Thank you for your consideration of these points. We would appreciate anything you can do to see that the MSRA implementing regulations take these recommendations into account, and we would be pleased to discuss them further with you at your convenience.

Handwritten signature of Barney Frank in cursive script.

Rep. Barney Frank

Handwritten signature of John F. Tierney in cursive script.

Rep. John Tierney

Attachment: April 17, 2007 comment letter from U.S. Reps. Frank and Tierney